

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

11:40:23

4  
5 )  
6 UNITED STATES OF AMERICA, )  
7 Plaintiff, )  
8 vs. ) Case No. 2:18-CR-365  
9 )  
10 JACOB ORTELL KINGSTON, ISAIAH )  
11 ELDEN KINGSTON and LEV ASLAN )  
12 DERMAN,  
13 Defendants.  
14 )  
15  
16 BEFORE THE HONORABLE BROOKE WELLS  
17 DATE: AUGUST 29, 2018  
18 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
19 STATUS CONFERENCE  
20  
21  
22  
23  
24  
25 Reporter: REBECCA JANKE, CSR, RMR  
(801) 521-7238

1  
2 A P P E A R A N C E S  
3

4 FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE  
11:40:23 5 TAX DIVISION  
6 BY: LESLIE A. GOEMAAT, ESQ.  
7 ARTHUR J. EWENCZYK, ESQ.  
8 RICHARD ROWLING, ESQ.

9 601 D STREET, NW, SEVENTH FLOOR  
11:40:23 10 WASHINGTON, D.C., 20530

11  
12  
13  
14 FOR JACOB KINGSTON: BUGDEN & ISAACSON  
11:40:23 15 BY: TARA ISAACSON, ESQ.  
16 445 EAST 200 SOUTH, SUITE 150  
17 SALT LAKE CITY, UTAH 84111

18  
19  
20 FOR ISAIAH KINGSTON: SCOTT C. WILLIAMS, LLC  
11:40:23 21 BY: SCOTT C. WILLIAMS, ESQ.  
22 46 EAST 400 SOUTH  
23 SALT LAKE CITY, UTAH 84111  
24

11:40:23 25

1 AUGUST 29, 2018

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 \* \* \*

4 THE COURT: Counsel, ready? All right. Calling  
11:40:57 5 now the United States of America vs. Jacob Ortell  
6 Kingston, Isaiah Elden Kingston and Lev Aslan Derman. The  
7 United States is represented by -- and, counsel, if you'll  
8 please state your appearances.

9 MS. GOEMAAT: Leslie Goemaat from the Department  
11:41:19 10 of Justice on behalf of the United States, here with  
11 Arthur Ewenczyk and Richard Rolwing also of the Department  
12 of Justice.

13 THE COURT: I note that Mr. Jacob Kingston is  
14 here.

11:41:34 15 Mr. Williams, are you -- have you made an  
16 appearance in this matter?

17 MR. WILLIAMS: Yes, Your Honor. I made an  
18 appearance on Friday, and I'm here to inform Your Honor  
19 that I am retained -- and my appearance will remain.

11:41:49 20 THE COURT: All right. And that issue is  
21 resolved. Mr. Isaiah Kingston is also present.

22 Ms. Isaacson, are you making --

23 MR. WILLIAMS: Oh, I'm sorry. I thought you had  
24 called Isaiah Kingston when you referred to me, since  
11:42:06 25 that's who I was related to and appeared on, on behalf of

1 on Friday. If you said Jacob Kingston then I misheard  
2 you.

3 THE COURT: I did. So, with regard to Jacob  
4 Kingston, who is present?

11:42:18 5 MS. ISAACSON: Your Honor, Tara Isaacson  
6 appearing on an interim basis for Mr. Kingston.  
7 Previously Mr. Gregerson was temporarily appointed. What  
8 we expect, Your Honor, the family is in the process of  
9 retaining private counsel. We expect to be local counsel.

11:42:36 10 He's going to be retaining John Brownly and Matheson Beta,  
11 who are Washington, D.C. Lawyers. We expect that the  
12 formal appearances by local counsel, Mr. Bugden and  
13 myself, as well as the counsel from DC, will be made by  
14 Friday. And so, at that time, once we enter our formal  
11:42:53 15 appearance, I'm sure Mr. Gregerson will want to formally  
16 withdraw from the case.

17 But our request today, Judge, I have spoken with  
18 opposing counsel and with the attorneys in D.C., and our  
19 request with respect to Jacob Kingston would be to  
11:43:08 20 continue the detention hearing today until next Wednesday,  
21 which is the 5th, where all the retained counsel can be  
22 present, the lawyers from D.C. can be present and we can  
23 address the issue of detention with respect to Mr. Jacob  
24 Kingston.

11:43:25 25 THE COURT: All right. And so now, as to Isaiah

1           Kingston, you're making that appearance, Mr. Williams?

2           MR. WILLIAMS: Yes, Your Honor.

3           THE COURT: All right. And so, Mr. Gregerson, I  
4 appreciate your participation thus far, but I think, under  
11:43:45 5 the circumstances, you will not have any further  
6 responsibility. Please submit your request for payment  
7 under the CJA for these two appearances.

8           MR. GREGERSON: Thank you, Your Honor.

9           THE COURT: All right. So the question of  
11:44:09 10 representation seems to be resolved, and, Ms. Isaacson,  
11 your appointment -- are you entering an appearance now as  
12 local counsel?

13           MS. ISAACSON: Not formally yet, Judge. We think  
14 we will have that resolved by Friday.

11:44:30 15           THE COURT: You will need to have it resolved by  
16 Friday.

17           MS. ISAACSON: We will, Judge.

18           THE COURT: He is either to submit his financial  
19 affidavit or to have counsel retained no later than Friday  
11:44:43 20 at noon.

21           MS. ISAACSON: Understood.

22           THE COURT: All right? And an appearance needs  
23 to be entered. All right. So that resolves that issue.  
24 This is the time that was also scheduled for consideration  
11:44:59 25 of a detention hearing. You've asked for a continuance of

1 that. I see today just a few minutes earlier, a document  
2 entitled Memorandum in Opposition to Detention Hearing and  
3 Request for Immediate Relief that was filed by  
4 Mr. Williams.

11:45:21 5 Mr. Williams, I note on the front of this, and  
6 I'll let you argue, which I'm sure you will, that this  
7 does not deserve a detention hearing. However, that  
8 statute does allow me to, *sui sponte*, make a  
9 determination, should I determine that there is either a  
11:45:42 10 risk of danger or a risk of non-appearance. Go ahead and  
11 argue, but I think that's a losing one.

12 MS. ISAACSON: Your Honor, would you mind  
13 addressing the issue of Jacob Kingston and maybe we can  
14 set a date on -- for the further detention hearing and we  
11:46:01 15 could end that portion of the hearing and let Mr. Williams  
16 address Isaiah.

17 THE COURT: That's fine. All right.

18 MS. ISAACSON: Does the Court have time?

19 THE COURT: But I anticipate them -- the hearing  
11:46:15 20 being the same for both, all right?

21 MR. WILLIAMS: We will be objecting to that.

22 THE COURT: I know. So that's why I'm saying,  
23 Ms. Isaacson, let's wait a minute and let me hear from  
24 Mr. Williams.

11:46:31 25 MS. ISAACSON: Understood.

1 MR. WILLIAMS: I guess I'm not unused to  
2 having -- being told before argument that I'm going to  
3 lose, but I believe that the motion that we filed today is  
4 brought with merit. And I think that, at least in this  
11:46:51 5 district, especially, and especially based on recent  
6 holdings by other Courts, including Judge Nuffer and  
7 Magistrate Judge Furse's recent memorandum decision, which  
8 I have attached to the pleading today, that, at least in  
9 this district, the position is that a preliminary  
11:47:13 10 threshold finding is required under the relevant statutory  
11 law in order to determine whether immediate release is  
12 appropriate or a detention hearing is warranted.

13 And I submit to Your Honor that that threshold  
14 finding -- if the detention hearing is going to be set  
11:47:33 15 based on a *sui sponte* order of this Court, as you  
16 referenced, rather than the present motion by the  
17 government, I don't think that changes the standard from  
18 the very well-written and reasoned, it seems to me,  
19 opinion of Judge Furse one month ago.

11:47:53 20 The position is, according to law applying the  
21 relevant statutory provisions that we're dealing with,  
22 that there's a threshold determination that ought to be  
23 met because of all of the presumptions of release that  
24 apply. The considerations are justice, that this case, by  
11:48:12 25 charge, by nature and by factual basis doesn't qualify for

1       detention in any of the basic iterated portions of the  
2       detention statute. It doesn't.

3                  We can tick down through those, which is  
4       preliminary because I'm not going about a threshold  
11:48:34     5       hearing, and I will say that even Judge Furse acknowledges  
6       it's not clear what the quantum of evidence that's  
7       necessary to make the threshold finding is, but it ought  
8       to be undertaken, and in that -- in her ruling, she did.  
9       Of course she found a threshold. That was a rather  
11:48:52     10      remarkable case where she ultimately released the  
11       defendant, who was a convicted bank robber on new robbery  
12       charges and hadn't appeared at his last Court hearing.

13                  But I don't see any distinction. If a threshold  
14       finding is required, I don't see any distinction between  
11:49:11     15       the requirement that this Court articulate the basis for  
16       it. I don't see any distinction between a *sui sponte*  
17       ruling that a detention hearing ought to be had or the  
18       government's motion -- based on the government's motion.  
19       So we believe that Your Honor ought to have to articulate  
11:49:33     20       findings of facts, and we would like to be able to respond  
21       to those.

22                  By the way, I think that the starting position as  
23       well, and a critical one in this particular case for  
24       Isaiah Kingston, is that -- and I have referenced relevant  
11:49:51     25       law. And frankly, in that law, it indicates that it would

1 even be a violation of Rule 46 not to consider each  
2 defendant entirely separately on the merits of detention  
3 considerations.

4                             The government's -- I don't know what this Court  
11:50:06 5 would find -- make a threshold finding on. I can only  
6 presume it would be something in the government's motion.

7                             THE COURT: Well, and I have reviewed the  
8 government's motion.

9                             MR. WILLIAMS: And our position is, anything that  
11:50:19 10 is proffered in that, that would support a detention  
11 argument, is wrong or false and that the document is --  
12 clearly argues that Isaiah Kingston ought to be detained  
13 in relation to a whole variety of acts of other people,  
14 including his two co-defendants. It is remarkable in the  
11:50:49 15 nature of the proffer. There is one sentence in the  
16 government's memo that is astonishing to me in terms of  
17 the proposition that the government would think any Court  
18 of Law would give it weight.

19                             And that is a reference -- and this is  
11:51:12 20 characteristic of the entire proffer of the government,  
21 especially as it applies to Isaiah Kingston: Another  
22 witness told investigators that an employee of WRE heard  
23 from Jacob Kingston's brother-in-law -- three hearsay  
24 levels -- that -- and then it doesn't have quotes or  
11:51:30 25 anything else -- that Jacob Kingston and Isaiah Kingston

1 had just returned from a two-week trip to Turkey where  
2 they purchased a home and that Jacob Kingston and Isaiah  
3 Kingston intended to flee to Turkey.

4 I mean, that triple hearsay proffer out of  
11:51:47 5 context, with no date associated with it or anything, I  
6 mean, if a party to a lawsuit really has the audacity to  
7 suggest that a Court could consider that, I submit to Your  
8 Honor, you should hold that you're not. I mean, that's  
9 outrageous. Imagine a proffer being made about your or my  
11:52:07 10 conduct on that sort of basis. I mean, it's outrageous.  
11 And that is the tenor and nature -- and I can go  
12 line-by-line through the government's memorandum and  
13 proffer in that regard.

14 And proffers are just that. They are acceptable,  
11:52:24 15 but they are acceptable to be given whatever weight they  
16 merit. And a proffer of a triple hearsay statement out of  
17 context, without a date, in relation to a case where the  
18 criminal conduct alleged is over two years prior, and the  
19 two years since the raid of relevant entities, which there  
11:52:43 20 were five in 2016, by the way, five entities raided.  
21 Mr. Isaiah Kingston's house was not one of them. And the  
22 fact that the last two years of Mr. Isaiah Kingston's  
23 life, vis-a-vis the raid and the Grand Jury investigation  
24 that followed it, has been to comply with and help to  
11:53:07 25 fulfill the Grand Jury discovery requirements and order

1 for the Grand Jury. That's been his life two years.

2 The omission of things like that in this document  
3 as they apply to Isaiah Kingston is very concerning in  
4 terms of candor to the Court. So I think that -- and that  
11:53:22 5 applies to the raid itself, where the government talks  
6 about a raid two years ago that didn't warrant,  
7 apparently, any charges against Mr. Kingston in the last  
8 two years, and fails to tell the government and the  
9 public, since it's not a sealed document and it's received  
11:53:41 10 lots of attention in recent press articles of course, that  
11 the raid was successful in obtaining apparently over two  
12 terabytes of documents and information that the Grand Jury  
13 process has been engaged with and Mr. Isaiah Kingston has  
14 been cooperating through a lawyer in responding to.

11:54:02 15 I can go on and on about every single proffer, so  
16 in this particular instance -- and let's keep in mind, by  
17 the way, he is charged with two counts, 13 and 15, money  
18 laundering, from 2013. That, in terms of weight of  
19 evidence and nature of the case circumstances that Your  
11:54:22 20 Honor will eventually deal with if we have a detention  
21 hearing, it seems to me is relevant to the question about  
22 whether we should.

23 I would like to let Your Honor know again,  
24 relative to the question of whether we should have a  
11:54:33 25 detention hearing, that there are a great deal of hardship

1 issues involved. Mr. Isaiah Kingston suffers a cancer  
2 diagnosis, and he suffers from severe ulcerative colitis.  
3 Incarceration is especially impactful to him, and, as of  
4 today, we learned that our efforts to get his medication  
11:54:53 5 that he has been referred to taking by a doctor, with a  
6 letter from that doctor that we had provided to the  
7 marshal and the jail that he is in right now, have  
8 responded to us today that they will not. Of course they  
9 maintain that they will assess him with their own medical  
11:55:13 10 considerations.

11 But further, his wife is pregnant and due any  
12 time. Her official due date is in about three weeks, I  
13 think. She's historically early, and the signs are that  
14 she would be early. It would be an incredible hardship to  
11:55:31 15 have something like the birth of a child occur under these  
16 circumstances and the nature of this proffer to detain  
17 Mr. Isaiah Kingston without consideration of specific  
18 threshold factors.

19 Now, I didn't know whether the Court, on the  
11:55:45 20 question of threshold, would be open to a complete counter  
21 proffer to every single thing in this memorandum as it  
22 applies to Isaiah Thompson. For instance, he does not  
23 have any access to a private jet and has been on one once  
24 that had nothing to do with this case. That omission  
11:56:11 25 seems to me to be material and important.

1                   THE COURT: You seem to be arguing your detention  
2 argument now.

3                   MR. WILLIAMS: Given that the -- according to the  
4 well-reasoned opinion of Magistrate Furse on this very  
11:56:25 5 subject last month, it suggests that it's not clear what  
6 the quantum is and what the appropriate factors would be,  
7 and I think there are appropriate factors.

8                   THE COURT: With all due respect to Magistrate  
9 Furse, I'm not bound by her findings.

11:56:40 10                  MR. WILLIAMS: You are not, but it's a local  
11 district memorandum that cites to law that is binding, or  
12 at least is strongly -- something this Court should  
13 strongly consider from other circuits.

14                  THE COURT: I'm happy to consider it, but I do  
15 have -- and I want to hear from the government -- but I  
16 can call for this in a *sui sponte* manner based upon the  
17 information I have, so I will do so.

18                  MR. WILLIAMS: I understand. I would like to ask  
19 the Court -- it's our request that the Court articulate  
11:57:16 20 the factual bases that the Court believes meets the  
21 threshold requirement to set this for a detention hearing  
22 and then allow a counter proffer by the defense in  
23 relation to whatever specific, as you say, things before  
24 you Your Honor would be utilizing because I think that we  
11:57:33 25 are entitled to that in terms of -- frankly in terms of

1 notice. We don't know what Your Honor thinks about or  
2 has -- I mean, all we know that you have before you is a  
3 pretrial report.

4 THE COURT: That's what I have.

11:57:47 5 MR. WILLIAMS: And the memorandum.

6 THE COURT: And the memorandum.

7 MR. WILLIAMS: And the whole world has seen the  
8 memorandum and its contents. And our position is and our  
9 general counter proffer is, it's false as it applies to  
11:58:00 10 Isaiah Kingston, misleading and terribly concerning in  
11 terms of its material omissions on the subjects that it  
12 brings up. And therefore we believe, under these  
13 particular circumstances, Mr. Isaiah Kingston has a right  
14 to know what it is that this Court would in fact rely upon  
15 to make the threshold finding and then be allowed an  
16 opportunity at least here on our feet, since we don't know  
17 yet, to offer counter proffers to that information.

18 THE COURT: Thank you.

19 MS. GOEMAAT: Good afternoon, Your Honor. Based  
11:58:42 20 upon the statute, upon motion of the attorney of the  
21 government or the judicial officer's own motion in a case  
22 involving a serious risk that such person will flee or a  
23 serious risk that such person will obstruct or attempt to  
24 obstruct justice, threaten, injure, intimidate or attempt  
11:58:57 25 to do the same to a prospective witness or juror, a

1 hearing shall be held.

2                   The United States submits that through its  
3 proffer and submitted evidence in the motion for  
4 detention, the government has met the threshold burden to  
11:59:13 5 show that Mr. Isaiah Kingston poses both a serious risk  
6 that he will flee, as well as a serious risk that he will  
7 obstruct or attempt to obstruct justice for the following  
8 reasons:

9                   First. Mr. Isaiah Kingston is a 50 percent owner  
11:59:28 10 and the chief financial owner of Washakie Renewable  
11 Energy. As demonstrated in Exhibit B to the United  
12 States' motion, from 2013 through 2015, Washakie Renewable  
13 Energy wired in excess of at least \$134,000,000 to various  
14 bank accounts in the country of Turkey.

11:59:51 15                   As demonstrated by Exhibit C to the United  
16 States' motion for detention, it appears that Washakie  
17 Renewable Energy in concert with co-defendant Levon  
18 Termendzhyan's company Noil Energy and a third company SBK  
19 Holding, LLC, also involved in a charged money laundering  
20 count, have invested upwards of \$450,000,000 in Turkey,  
21 according to the press release, with an intention to  
22 invest an additional \$950,000,000.

23                   Now, the timing of this press release and the  
24 timing of the additional \$500,000,000 anticipated to be  
12:00:36 25 invested in Turkey coincide with the last two false and

1       fradulent Forms 8849 filed by the defendants' two  
2       companies, Washakie Renewable Energy and United Fuel  
3       Supply, which requested in excess of \$600,000,000 in  
4       refundable tax credits for tax year 2015. Those tax  
12:00:58 5       refunds were not paid. That's detailed in Government's  
6       Exhibit A..

7                   So, first and foremost, the United States submits  
8       that defendant Isaiah Kingston has an absolute 50 percent  
9       equal right to the \$134,000,000 that has been wired to the  
12:01:16 10      country of Turkey. As Your Honor is likely aware, as it  
11      has been announced in the press in its calendar year,  
12      President Erdogan has announced he will not be extraditing  
13      U.S. persons from Turkey until the United States  
14      extradites the Pennsylvania cleric Fethullah Gulen.

12:01:39 15                   Secondly, the United States has interviewed a  
16      witness who has stated, as Mr. Williams rightly noted,  
17      that he heard from an employee of Washakie, through Jacob  
18      Kingston's brother-in-law, that both Isaiah Kingston and  
19      Jacob Kingston purchased a residence in Turkey and  
12:01:53 20      intended to flee there should they face prosecution.

21                   Now, we submit that all defendants in this case  
22      have access to means to flee to Turkey, as money has been  
23      invested in SPK Holdings AS, which is the Turkey SPK  
24      Holdings. Washakie Money, a company equally owned by  
12:02:16 25      defendants Jacob Kingston and Isaiah Kingston were

1 invested in SPK Holdings AS, which then purchased a  
2 private airline called Borajet. Mr. Kingston's  
3 co-defendant, Levon Termendzhyan, used a Borajet airplane  
4 to flee California in August of 2017, when unrelated state  
12:02:39 5 search warrants were being executed.

6 We submit that that is sufficient evidence to  
7 show that these three defendants, through their companies  
8 through which they have entered commingled funds, have  
9 access to an airline which they could use to flee the  
12:02:57 10 country.

11 Mr. Isaiah Kingston also has significant motive  
12 to flee the country. Here he is charged in two counts of  
13 money laundering, and I need to correct this statement  
14 from the initial appearance. The statutory maximum for  
12:03:11 15 Counts X through XIV, concealment money laundering, is 20  
16 years. Therefore, on this first Indictment, Mr. Isaiah  
17 Kingston faces a maximum sentence of 30 years. Mr. Jacob  
18 Kingston faces a maximum sentence of 137 years. The  
19 guidelines calculate the relevant conduct, and the  
20 guidelines range for money laundering, based upon the  
21 specified unlawful activity that is the source of the  
22 funds if the defendant could be found guilty. In this  
23 case, all three defendants are charged or are alleged to  
24 have participated with each other and others in a mail  
12:03:52 25 fraud scheme that netted \$511,000,000 from the United

1 States Treasury in fraudulently obtained refunds.

2 The United States would proffer that the intended  
3 loss from this mail fraud scheme was in excess of \$1.1  
4 billion. Therefore we submit that, should he be convicted  
12:04:16 5 on these charges alone, Mr. Isaiah Kingston will face a  
6 guidelines range of life in prison, although the statutory  
7 max on these charges are 30 years.

8 We'll also submit to Your Honor that the United  
9 States intends to present to the Grand Jury additional  
12:04:31 10 charges for their consideration regarding both Mr. Jacob  
11 and Isaiah Kingston. Therefore we submit that we have met  
12 and exceeded the threshold requirement to show that this  
13 defendant, Mr. Isaiah Kingston, poses a serious risk of  
14 flight.

12:04:49 15 In addition, we submit we have shown that this  
16 defendant poses a serious risk of obstruction. The United  
17 States submitted text messages to Your Honor, Exhibits C  
18 and D to the motion. These text messages were retrieved  
19 from a cell phone that was seized from a third party. The

12:05:11 20 text messages show clearly that Mr. Jacob Kingston is  
21 attempting to bribe government officials and to pay  
22 enforcers to visit prospective witnesses. As it pertains  
23 to Mr. Isaiah Kingston, the text messages make it clear  
24 that Mr. Jacob Kingston is sending Isaiah Kingston with  
12:05:32 25 the money to pay the bribes to the intermediary.

1                   The investigation ultimately uncovered that the  
2 intermediary kept this money, did not pay those bribes,  
3 but the United States submits that, based on the face of  
4 the text messages alone, it is clear that Mr. Jacob  
12:05:53 5 Kingston believed he was successfully paying bribes and  
6 paying enforcers.

7                   Many witnesses in this case, enumerable witnesses  
8 have expressed fear of reprisal for cooperating with the  
9 United States. Just this morning the United States  
12:06:09 10 received a message from an attorney who represents a CI in  
11 this case, stating his client had received numerous death  
12 threats and he was moving his client into a safe house.  
13 There are very real safety concerns for witnesses in this  
14 case, and the intent and action taken to pay bribes both  
12:06:33 15 to enforcers who would hurt and intimidate witnesses and  
16 law enforcement officials is clear on the face of Exhibit  
17 C and D submitted by the United States attached to the  
18 motion.

19                   This is particularly concerning because, as the  
12:06:46 20 United States' motion states, the nine executed search  
21 warrants on February, 10, 2016 were leaked in some regard.  
22 In some way, the persons associated with these various  
23 locations learned of the impending search warrants.  
24 Records were destroyed. In responds to Mr. Williams'  
12:07:07 25 assertion that Mr. Isaiah Kingston has been attempting to

1 comply with the subpoena in this matter, that is a subject  
2 of sealed litigation, and it's probably not appropriate  
3 for an open courtroom, but we'd be happy to address that  
4 matter if we seal the courtroom.

12:07:25 5 Your Honor, the United States submits that we  
6 have far exceeded the threshold requirement to show that  
7 Mr. Isaiah Kingston poses a very serious risk of flight  
8 based on his access to \$134,000,000 in Turkey, his access  
9 to a private airline and his incentive and motive to flee  
12:07:44 10 based on the potential guideline sentence in this case.  
11 We also submit we have shown there is a serious risk he  
12 will obstruct or attempt to obstruct justice based on the  
13 demonstrated attempts to pay enforcers to harm or  
14 intimidate prospective witnesses as well as the message  
12:08:03 15 received this morning by an attorney who has moved a  
16 witness to a safe house as well as the numerous  
17 expressions of concern from witnesses in this case.  
18 We would ask Your Honor to hold a detention  
19 hearing, and we will at that time argue for the detention  
12:08:13 20 of Mr. Isaiah Kingston.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: Judge, as to the sort of where we  
23 ended there, we heard a lot of allegations about money  
24 going to Turkey. There is no -- not even a proffer of  
12:08:28 25 what basis the government has to believe that Isaiah

1           Kingston would have access to any of it.

2           THE COURT: She stated that he's a 50 percent  
3 owner.

4           MR. WILLIAMS: It might be worthwhile to know  
12:08:41 5       that a Court in New York recently found that  
6 representations that Washakie has holdings in Turkey were  
7 false, that they don't have any holdings in Turkey. But a  
8 50 percent owner on paper of a company is not, I would  
9 submit, any evidence that that person has access to what  
12:08:58 10     someone else in that company might have done in the way of  
11 putting money in Turkey. How is that a connection? The  
12 50 percent ownership right now in Washakie is worth  
13 nothing. Washakie was without the ability to conduct  
14 business after the 2016 raids. It's insolvent.

12:09:19 15           In the United States of America, Mr. Isaiah  
16 Kingston has access to no Washakie money. He works on a  
17 salary basis for USF. He was raided two years ago with  
18 all of these things in the air and has done nothing to  
19 show any intent to flee. Whether or not his brother  
12:09:37 20 referenced him in some text chain is unfortunate but  
21 doesn't prove that he did anything, let alone knowingly.

22           And there's just no proof that I have heard from  
23 the government of access to any money by Isaiah Kingston.

24           THE COURT: Well, it's for them to prove, to  
12:09:55 25 show. But they are making proffers, just as you are

1 making proffers, and if I'm going to accept your version  
2 of things, I likewise can consider theirs.

3 MR. WILLIAMS: Except they have the burden. Mine  
4 is to counter.

12:10:17 5 THE COURT: I understand. I understand that.

6 MR. WILLIAMS: And I'm saying the burden is not  
7 met by just saying sometime, years ago -- now I guess at  
8 least two, as is shown by the exhibit in the charging  
9 document in this case -- the last acts related to criminal  
12:10:33 10 activity brought in this Indictment were in 2016, the same  
11 month of the raid. I submit, while we're on the subject,  
12 that the proffer about obstruction and any kind of witness  
13 tampering issues or anything like that, they have had two  
14 years to charge any activity or to seek -- I mean, if they  
12:10:55 15 are really, really, after being put on notice two years  
16 ago of legitimate issues that the government thinks apply  
17 to threats to human beings, they are standing here telling  
18 this Court they have done nothing about it until now, when  
19 they want to take a threat away in a case that has to do  
12:11:15 20 with a 2013 money laundering charge? I am a concerned  
21 citizen.

22 So, I mean, the counter proffer is the government  
23 has just asserted that 50/50 ownership in Washakie  
24 presently means anything. And that's just a bare  
12:11:28 25 assertion, and it's common sense that that could still

1 mean nothing in terms of the organization of who has  
2 rights to what in money, or what has to do with, you know,  
3 who can do anything to get money from a foreign country.

4 THE COURT: It's a factor for consideration.

12:11:48 5 MR. WILLIAMS: I don't -- I agree that it's a  
6 relevant factor. My position here is not that these are  
7 not relevant factors but that their proffers that are  
8 based in such weak -- a proffer is a proffer of evidence,  
9 right? And the Court's rule is to accept the evidence  
12:12:03 10 that's proffered and the weight that should be given it.  
11 These proffers are triple hearsay claims. We still don't  
12 know a date when this statement was supposedly made. What  
13 if it was made seven years ago?

14 THE COURT: Mr. Williams, I will do that, but  
12:12:20 15 it's my ruling that they have met the threshold and that  
16 I, based upon that proffer, have the statutory right to  
17 hold a hearing if I think there is sufficient proffer to  
18 believe that either or both of them constitute risk of  
19 danger or risk of non-appearance. And so, I'm going to  
12:12:47 20 deny your request. We're going to set the matters for  
21 detention hearings, and we can set them for whatever  
22 length of time that you think appropriate, within the  
23 Court's schedule. All right? And you can have them  
24 separately or you can have them together. But it makes  
12:13:08 25 much more sense to me to have them held together because

1 we're not duplicating information and evidence that may  
2 apply to both.

3 MR. WILLIAMS: And in response to that, Your  
4 Honor, I accept that Your Honor has made the ruling that,  
12:13:26 5 based on the government's proffer, a threshold finding can  
6 be made that warrants a detention hearing on either sui  
7 sponte order of this Court and/or the government's motion  
8 for detention; is that correct?

9 THE COURT: Correct.

12:13:49 10 MR. WILLIAMS: We feel, under the circumstances  
11 as I've articulated them as best I can today -- we haven't  
12 filed a full memorandum in relation to the detention  
13 issues because we are new to the case and that's a large  
14 job in this case.

12:14:06 15 THE COURT: I know that.

16 MR. WILLIAMS: But we do believe the  
17 constitutional principles and rules iterated in the law  
18 that I have supplied in the brief memorandum today having  
19 to do to with the need to take specific and individualized  
12:14:20 20 consideration of independent defendants on an independent  
21 basis, feel that we should have a hearing that is a  
22 hearing only for Isaiah Kingston. As I have already said,  
23 we believe the government's argument is much more of an  
24 argument that he's his brother and a half owner, so we  
12:14:42 25 should attribute everything that Jacob Kingston did.

1 I'm not saying Your Honor can't reasonably ferret  
2 that out, but I just do think in this particular case,  
3 based upon the government's pleading, it is an actual  
4 tactic and strategy and it's best guarded against by  
12:14:59 5 having a specific and individualized.

6 And I don't think they overlap. I mean, how does  
7 it overlap necessarily with Mr. Isaiah Kingston if the  
8 government can prove that Jacob Kingston did something? I  
9 mean, they need to have the connection, and they don't  
12:15:16 10 even proffer a connection here. They just use the  
11 conjunction "and" conveniently, control enter.

12 THE COURT: Thank you.

13 Do you have any response to that?

14 MS. GOEMAAT: Your Honor, the United States is  
12:15:28 15 prepared to make a proffer and address arguments  
16 individually as to Jacob Kingston and Isaiah Kingston,  
17 whether it is at a hearing held consecutively or on  
18 different days. We would suggest that having both  
19 hearings on the same day would be more efficient, as there  
12:15:44 20 is some amount of evidence that goes to both defendant  
21 Jacob Kingston and Isaiah Kingston's risk of flight;  
22 namely, that their jointly owned company has invested a  
23 huge amount of the fraudulent proceeds that they are  
24 alleged to have obtained together in a scheme in Turkey.

12:16:00 25 However, should we have the hearing on the same

1 day, we are prepared to address each defendant  
2 individually.

3 THE COURT: Do we have a full day coming? Can we  
4 move things around?

12:16:32 5 MS. ISAACSON: Your Honor, if you might consider  
6 next Wednesday the 5th, I think that was a date that the  
7 government could make happen. It sounds like -- are  
8 we setting them on the same day, then? I don't know.

9 THE COURT: Yes.

12:16:46 10 MR. WILLIAMS: The Court understands my request,  
11 right?

12 THE COURT: I do.

13 MS. ISAACSON: So all the parties from the  
14 defense?

12:16:53 15 THE COURT: We will set them next Wednesday.

16 Ms. Peart, what times?

17 MS. GOEMAAT: Your Honor, we would ask you to  
18 consider, based upon the government counsels'  
19 availability, we had conferred with Ms. Isaacson, and I  
12:17:08 20 thought we had agreed upon the 10th as a potential day for  
21 the detention hearing. We would request --

22 THE COURT: I will not be in town.

23 MS. ISAACSON: So the options for us -- we have a  
24 full day -- the defense team would have a full day on the  
12:17:22 25 5th, on Tuesday the 11th --

1                   THE COURT: I'm out of town that entire week.

2                   MS. ISAACSON: If we could make it happen on the  
3 5th, that would be our request.

4                   THE COURT: All right.

12:17:35       5                   MR. WILLIAMS: Your Honor, it's our request that  
6 the detention hearing for Isaiah Kingston be scheduled for  
7 this Friday, the day after tomorrow. I also believe that  
8 the reading of the statute requires that that occur. He  
9 has had continuity of counsel since his initial appearance  
12:17:53       10                  on last Friday. The statute contemplates having a  
11 detention hearing on the date of the initial appearance.  
12 The exceptions for that are a motion to continue by the  
13 government, and that motion, if it's granted, can be  
14 granted for only three days. A motion to continue by the  
12:18:11       15 defendant, if granted, can be granted only for five days.  
16 The fifth day, by our calculation, is this coming Friday,  
17 and we're asking for the hearing then.

18                   THE COURT: I don't know that we can accommodate  
19 that. Okay. We can. 2:00 o'clock on Friday for  
12:18:34       20 Mr. Isaiah Kingston.

21                   MS. GOEMAAT: Your Honor, two points. First, it  
22 appears in the statute that the five- and three-day  
23 limitations are except for a good cause. We would submit  
24 that it is good cause shown that a significant amount of  
12:18:46       25 the evidence to be proffered will be duplicative and,

1 secondly, to allow government counsel to return to D.C. on  
2 Friday. We would request that the hearing, if it is going  
3 to be held on Friday, it be held in the morning.

4 THE COURT: Counsel, I'm on the criminal rotation  
12:19:04 5 this month, and we have been very full, so we've got to  
6 accommodate my calendar as well. We can do it Friday at  
7 2:00. All right?

8 MS. GOEMAAT: Yes, Your Honor.

9 THE COURT: Thank you.

12:19:17 10 Anything further? And, Mr. Kingston and  
11 Mr. Kingston, in the interim, you will both be held in  
12 custody. Ms. Isaacson, we set yours for next Wednesday.

13 MS. ISAACSON: What time would you like us here,  
14 Judge?

12:19:38 15 THE CLERK: 10:30.

16 THE COURT: Now, I've got some information  
17 that -- about medications and about specialized diet.

18 MR. WILLIAMS: Your Honor, as to Isaiah Kingston,  
19 and I'm assuming that's what you're speaking to.

12:19:58 20 THE COURT: Yes.

21 MR. WILLIAMS: I don't know if there is anything  
22 applicable to Mr. Jacob Kingston. We had submitted a  
23 proof from American Wellness, and we have Clinic E Medical  
24 Practice that serves the needs of Isaiah Kingston, and  
12:20:19 25 specifically this document was with regard to his health

1 issues with crohn's and colitis, and he is on a strict  
2 functional medical plan of care, including a number of  
3 specified holistic medicines. Those -- do you have that  
4 before you?

12:20:47 5 THE COURT: I do.

6 MR. WILLIAMS: Okay, great, because we sent it to  
7 the marshall's office. We sent it to the jail. He is  
8 currently housed in Weber County jail. I have no idea  
9 whether the issues we're about to talk about would be  
12:21:05 10 different in any jail. I think, as you know, we're  
11 constantly trying to maneuver the two different  
12 proclivities in this area, you know. At any rate, these  
13 are serious issues that he has. I also provided documents  
14 from the University of Utah.

12:21:20 15 THE COURT: They are from 2009.

16 MR. WILLIAMS: They are, but that makes them more  
17 relevant because Mr. Kingston has not been able to  
18 maintain a treatment regimen with regard to the cancer  
19 that was diagnosed then, and it is therefore something he  
20 suffers from. And I don't think it's necessary unless  
21 Your Honor wants me to get into the specifics of why he  
22 has been unable to maintain a regimen that might be  
23 recommended by the University of Utah with regard to that.  
24 But they document that he has that diagnosis, and that's  
12:21:56 25 why I bring it up.

1                   THE COURT: All right.

2                   MR. WILLIAMS: It didn't go away, we proffer to  
3 Your Honor. He suffers from the cancer diagnosis as well.  
4 I want to update the Court that our efforts regarding the  
12:22:09 5 strict functional medical plan of care and the various  
6 medications that are referenced by Carol Stole in the  
7 document that we are referring to, with regard to those,  
8 we received a message today from the Weber County jail and  
9 the marshall's office, that they will not be able to or  
12:22:36 10 willing to accommodate those medications being  
11 administered to Isaiah Kingston.

12                  Also, I don't know, as I stand here, what the  
13 difference between a soft diet and hard diet is, but I  
14 think I know enough about the difference that it would  
12:22:59 15 matter to the concerns of Isaiah Kingston. His crohn's  
16 and severe ulcerative colitis condition would be impacted  
17 by foods that contain certain sugars and certain  
18 carbohydrates and other things, and I don't have any  
19 confidence that the difference between those two plans  
12:23:23 20 that they maintain are available in terms of diet  
21 vis-a-vis what he will suffer.

22                  He has been presently suffering an increase in  
23 his condition -- or decrease in his condition. He is  
24 suffering from the colitis and his ability to get  
12:23:42 25 sufficient nutrition. He has already lost significant

1 weight since his incarceration on Friday and so I don't  
2 know whether Your Honor is amenable to us in a separate  
3 proceeding and in a separate subject beginning to address  
4 whether this Court is willing to hear arguments about --  
12:24:01 5 and this I think would be ex parte, but address these  
6 issues through potential orders to the jail, but that's  
7 what we're going to ask.

8 THE COURT: I'll take that under advisement and  
9 let you know.

12:24:16 10 MR. WILLIAMS: Is it -- may I approach this Court  
11 ex parte on that subject?

12 THE COURT: You may.

13 MR. WILLIAMS: Additionally, I do want to make  
14 the record -- I think I have in the other context, but now  
12:24:31 15 in the context of his continued detention, that his wife,  
16 who is pregnant, is due to give birth to their child at  
17 any time, really.

18 THE COURT: Thank you. Anything further?

19 MS. GOEMAAT: Nothing from the United States,  
12:24:46 20 Your Honor.

21 THE COURT: All right.

22 Ms. Isaacson?

23 MS. ISAACSON: No, Your Honor, thank you.

24 THE COURT: Then we'll be in recess. Thank you.

25 (Whereupon the proceedings were concluded.)

1  
2 REPORTER'S CERTIFICATE  
34 STATE OF UTAH )  
5 COUNTY OF SALT LAKE ) ss.  
67 I, REBECCA JANKE, do hereby certify that I am a  
8 Certified Court Reporter for the State of Utah;9 That as such Reporter I attended the hearing of  
10 the foregoing matter on August 29, 2018, and thereat  
11 reported in Stenotype all of the testimony and proceedings  
12 had, and caused said notes to be transcribed into  
13 typewriting, and the foregoing pages numbered 1 through 32  
14 constitute a full, true and correct record of the  
15 proceedings transcribed.16 That I am not of kin to any of the parties and  
17 have no interest in the outcome of the matter;18 And hereby set my hand and seal this 7th day of  
19 September, 2018.

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REBECCA JANKE, CSR, RPR, RMR